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7
8 **BEFORE THE**
9 **BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation) NO. AL-98-13
Against:)
12) DEFAULT DECISION AND
JOHN CURTIS NOYER) ORDER OF THE BOARD
13 Post Office Box 20868)
Castro Valley, California 94546) [Gov. Code § 11520]
14)
Certified Public Accountant)
15 License No. CPA 24770)
16 Respondent.)

17
18 **STATUTES**

19 1. California Government Code section 11506 provides,
20 in pertinent part:

21 "(c) The respondent shall be entitled to a hearing on
22 the merits if the respondent files a notice of defense,
23 and any such notice shall be deemed a specific denial
24 of all parts of the accusation not expressly admitted.
25 Failure to file a notice of defense shall constitute a
26 waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a
hearing. Unless objection is taken as provided in
paragraph (3) of subdivision (a), all objections to the
form of the accusation shall be deemed waived."

27 California Government Code section 11506 further provides that

1 the Notice of Defense shall be filed within 15 days after service
2 of the accusation [Govt. Code sections 11506(a) and (b)].

3 2. California Government Code section 11520 provides,
4 in pertinent part:

5 "(a) If the respondent either fails to file a notice of
6 defense or to appear at the hearing, the agency may
7 take action based upon the respondent's express
8 admissions or upon other evidence and affidavits may be
9 used as evidence without any notice to respondent....".

10 3. The Board of Accountancy, Department of Consumer
11 Affairs ("Board"), is authorized to revoke respondent's Certified
12 Public Accountant License pursuant to California Business and
13 Professions Code section 5100 (hereinafter "Code"), which, at all
14 times material herein, has provided in pertinent part that "the
15 Board may revoke, suspend or refuse to renew any permit or
16 certificate" issued by the Board for unprofessional conduct,
17 including but not limited to willful violation of the Accountancy
18 Act or any Board rule or regulation promulgated by the Board
19 [Code section 5100(f)].

20 4. Code section 125.9 permits the Board to establish,
21 by regulation, a system for the issuance to a licensee of a
22 citation which may contain an order of abatement or an order to
23 pay an administrative fine where the licensee is in violation of
24 the licensing act or any regulation adopted pursuant thereto.
25 Code section 125.9(b)(5) provides in part that the failure of a
26 licensee to pay a fine within 30 days of the date of assessment,
27 unless the citation is being appealed, may result in disciplinary
28 action being taken by the Board..

29 5. The Board's regulations, adopted pursuant to its

1 rulemaking authority and Code section 125.9, and codified in
2 Title 16 of the California Code of Regulations^{1/}, provide, in
3 section 95 et seq., for the issuance of citations by the
4 Executive Officer of the Board. Board Rule 95.4 provides in
5 pertinent part as follows:

6 "When an order of abatement is not contested... failure
7 to abate the violation charged within the time
8 specified in the citation shall constitute a violation
9 and failure to comply with the order of
10 abatement...Such failure shall constitute a ground for
11 revocation or suspension of the license or permit."

12 6. Code section 118 provides, in pertinent part:

13 "(b) The suspension, expiration, or forfeiture by
14 operation of law of a license issued by a board in the
15 department, or its suspension, forfeiture, or
16 cancellation by order of the board or by order of a
17 court of law, or its surrender without the written
18 consent of the board, shall not, during any period in
19 which it may be renewed, restored, reissued, or
20 reinstated, deprive the board of its authority to
21 institute or continue a disciplinary proceeding against
22 the licensee upon any ground provided by law or to
23 enter an order suspending or revoking the license or
24 otherwise taking disciplinary action against the
25 license on any such ground."

26 Code section 5070.6 provides, in part, that an expired
27 license may be renewed, upon compliance with applicable
requirements, at any time within five years after its expiration.

28 FINDINGS OF FACT

29 Pursuant to its authority under Government Code section
30 11520, and based on the evidence before it, the Board finds that
31 the following allegations contained in Accusation AL-98-13 are
32 true:

33 1. The Board's rules, codified at Title 16 of the California Code of Regulations in Sections 1-
34 99, are hereinafter referred to as "Board Rule." Thus, section 95 is Board Rule 95.

1 1. The license history of John Curtis Noyer
2 (hereinafter "Respondent"), is correctly set forth in the
3 Accusation.

4 2. On or about March 14, 1996, Citation No. CT-96-23
5 (hereinafter the "Citation") was issued to Respondent. The
6 Citation alleged one violation, set forth an order of abatement
7 and correction, imposed an administrative fine totalling \$500,
8 and established May 14, 1996, as the date on which, unless
9 contested, the Citation was to become a final order of the Board.

10 3. Respondent appealed the Citation and a hearing was
11 convened. In a Proposed Decision and Order dated March 10, 1997,
12 Administrative Law Judge Perry O. Johnson denied Respondent's
13 appeal of the Citation, affirmed the civil penalty of \$500, and
14 ordered Respondent to pay said sum to the Board within 60 days of
15 the effective date of the decision.

16 4. The Board adopted the Proposed Decision and Final
17 Order on April 2, 1997, and the effective date of the Decision
18 was May 2, 1997. By its terms, the Decision and Order required
19 Respondent's compliance by July 2, 1997. Copies of the Decision
20 and Order affirming the Citation were duly served, by Certified
21 Mail and First Class Mail, on Respondent at his address of
22 record.

23 5. A search of Board records reveals no evidence of
24 compliance with the Citation which is a final order of the Board.

25 6. On or about November 12, 1997, Complainant Carol
26 B. Sigmann, in her official capacity as Executive Officer of the
27 Board, filed Accusation No. AL-98-13 against Respondent alleging

1 as a basis for discipline his non-compliance with the Citation.
2 A copy of the Accusation is attached hereto as Exhibit A and
3 incorporated herein.

4 7. On or about November 19, 1997, Patricia A. Mota,
5 an employee of the Office of the Attorney General, served, by
6 Certified and First-Class mail, copies of Accusation No. AL-98-
7 13, Statement of Respondent, Government Code sections 11507.5,
8 11507.6 and 11507.7, the Notice of Defense form, and a Request
9 for Discovery, to:

10 a. Respondent's address of record with the Board
11 which was and is P.O Box 20868, Castro Valley, CA 94546; and

12 b. 5057 Blackhawk Drive, Danville, CA 94506.

13 On or about January 20, 1998 and December 15, 1997, respectively,
14 the documents were returned to the Office of the Attorney General
15 as "Unclaimed".

16 The above-described service was effective as a matter
17 of law pursuant to the provisions of California Government Code
18 section 11505(c) and Code section 124.

19 8. Respondent failed to file a Notice of Defense
20 within 15 days after service upon him of the Accusation and has
21 therefore waived his right to a hearing on the merits of
22 Accusation No. AL-98-13.

23 DETERMINATION OF ISSUES

24 Pursuant to its authority and according to the
25 provisions of Government Code section 11520(a), the Board
26 determines:

27 1. The Board is proceeding under the default

1 provision of California Government Code section 11520 based upon
2 the failure of Respondent to file a Notice of Defense as provided
3 therein.

4 2. Service of the Accusation was effective as a
5 matter of law pursuant to the provisions of California Government
6 Code section 11505(c) and Code section 124.

7 3. As a result of Respondent's failure to comply with
8 the final order of the Board, Respondent's certificate is subject
9 to discipline for unprofessional conduct in violation of Board
10 Rule 95.4, in conjunction with Code section 5100(f), by reason of
11 the Findings of Fact numbers 1 through 8 above, and cause for
12 revocation of the certificate has been established based upon
13 those findings of fact.

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15 C:\JEANNE\NOYER.DEF
16 (3/10/98)

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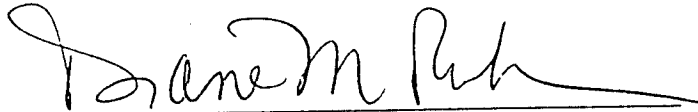
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1 ORDER OF THE BOARD OF ACCOUNTANCY

2 Certified Public Accountant License No. CPA 24770,
3 heretofore issued to Respondent John Curtis Noyer, is hereby
4 revoked. An effective date of May 1st, 1998,
5 has been assigned to this Order.

6 Pursuant to California Government Code section
7 11520(c), Respondent may serve a written motion requesting that
8 the decision be vacated and stating the grounds relied on. The
9 motion must be made in writing to the Board of Accountancy, 2000
10 Evergreen Street, Suite 250, Sacramento, California 95815, within
11 seven days after service on the Respondent of the default
12 decision.

13 Made this 1st day of April, 1998.

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15 Diane M. Rubin
16 Board President
17 For the Board of Accountancy
18 Department of Consumer Affairs
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Attorneys for Complainant

BEFORE THE BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:) Case No.: AL-98-13
JOHN CURTIS NOYER)
Post Office Box 20868) A C C U S A T I O N
Castro Valley, California 94546)
Certified Public Accountant No.)
CPA 24770)

Respondent.)

Complainant Carol B. Sigmann, as cause for disciplinary action, alleges:

PARTIES

1. Complainant is the Executive Officer of the California Board of Accountancy ("Board") and makes and files this accusation solely in her official capacity.

LICENSE INFORMATION

2. On or about June 17, 1977, Board Certificate No. CPA 24770 (the "Certificate") was issued to John Curtis Noyer ("Respondent").

1989-1991 RENEWAL PERIOD

3. The Certificate was expired during the period of August 1, 1989, through August 24, 1989, for the following reasons:

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1 a) The renewal fee, required by the Business and Professions Code Section
2 5070.5 (hereinafter "B&P Code"), was not paid;

3 b) Declaration of compliance with continuing education regulations was not
4 submitted.

5 4. A renewal application was submitted and the Certificate was renewed
6 effective August 25, 1989, for the period ending July 31, 1991, upon receipt of the
7 renewal fee. Declaration of compliance with continuing education regulations was not
8 submitted by the Respondent with the renewal application.

9 5. Respondent submitted a declaration of compliance with continuing
10 education regulations on November 14, 1989.

11 1991-1993 RENEWAL PERIOD

12 6. The Certificate was expired during the period of August 1, 1991, through
13 August 26, 1991, for the reasons set forth in paragraph 3 above.

14 7. The Certificate was renewed effective August 27, 1991, for the period
15 ending July 31, 1993, upon receipt of the renewal fee and declaration of compliance
16 with continuing education regulations.

17 1993-1995 RENEWAL PERIOD

18 8. The Certificate was renewed effective August 1, 1993, for the period
19 ending July 31, 1995, upon receipt of the renewal fee and declaration of compliance
20 with continuing education regulations.

21 1995-1997 RENEWAL PERIOD

22 9. The Certificate was expired during the period of August 1, 1995, through
23 August 20, 1995, for the reasons set forth in paragraph 3 above.

24 10. The Certificate was renewed effective August 21, 1995, for the period
25 ending July 31, 1997, upon receipt of the renewal fee and declaration of compliance
26 with continuing education regulations.

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CAUSE FOR DISCIPLINE

16. Respondent is subject to disciplinary action because he failed to comply with Board Citation No. CT-96-23 (the "Citation") which has become a final order of the Board. A true and correct copy of the Citation is attached hereto as Exhibit "A" and included herein by reference as though fully set forth. The circumstances are as follows:

a) On or about March 14, 1996, Citation No. CT-96-23 was issued to Respondent. The Citation was issued for an alleged violation of B&P Code, Section 5156, set forth an order of abatement and correction, imposed an administrative fine totaling \$500 and established May 14, 1996, as the date on which, unless contested, the Citation was to become a final order of the Board.

b) On or about March 14, 1996, copies of the Citation, Statement to Cited Person, Notice of Appeal, and relevant Governmental Code Sections (the "Citation Package") were served pursuant to the provisions of California Government Code Section 11505(c), and B&P Code Section 124, by both Certified Mail and First Class Mail, by Jenny Ayala, an employee of the Board, on Respondent at his address of record with the Board, which address was and is P.O. Box 20868, Castro Valley, California 94546.¹

c) On or about April 8, 1996, the Citation package sent by Certified Mail was returned to the Board by the United States Postal Service as "unclaimed." The above-described service was effective as a matter of law.

d) On or about April 15, 1996, Respondent submitted a Notice of Appeal and the matter was set for hearing on February 10, 1997. Respondent was duly served with a Notice of Hearing as required by Government Code section 11509.

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¹ The Government Code sections cited herein are provisions of the Administrative Procedures Act, which were in effect prior to amendments effective July 1, 1997.

1 e) Respondent appeared at, and participated in, the hearing, but left prior to
2 its completion. Board counsel had requested that Respondent be called to testify. After
3 Respondent's departure, Board counsel moved to proceed on a default basis under
4 Government Code section 11520.

5 f) In his Proposed Decision and Order, dated March 10, 1997, Administrative
6 Law Judge Perry O. Johnson denied Respondent's appeal of Citation No. CT-96-23,
7 affirmed the civil penalty of \$500, and ordered Respondent to pay said sum to the Board
8 within 60 days of the effective date of the decision. The Board adopted the Proposed
9 Decision and final Order on April 2, 1997, and the effective date of the Decision was
10 May 2, 1997. By its terms, the Decision and Order required Respondent's compliance
11 by July 2, 1997.

12 g) On or about April 2, 1997, a copy of the Decision and Order affirming the
13 Citation was served, both Certified Mail and First Class Mail, on Respondent at his
14 address of record with the Board, which address, was and is, P.O. Box 20868, Castro
15 Valley, California 94546 (Government Code section 11518).

16 h) On or about April 24, 1997, the original Decision and Order sent by
17 Certified Mail was returned to the Board by the United States Postal Service as
18 "unclaimed." The above-described service was effective as a matter of law pursuant to
19 the provisions of California Government Code section 11505(c) and B&P Code section
20 124.

21 17. As a result of Respondent's failure to comply with the final order of the
22 Board, Respondent's certificate is subject to discipline for unprofessional conduct in
23 violation of California Code of Regulations section 95.4, in conjunction with B&P Code
24 section 5100(f).

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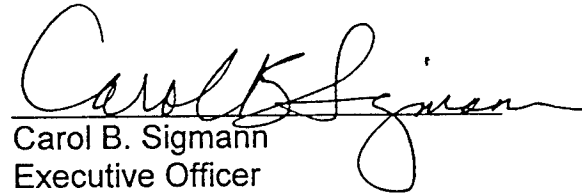
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1 PRAYER

2 WHEREFORE, the complainant requests that a hearing be held on the
3 matters herein alleged, and that following said hearing, the Board issue a decision:

- 4 1. Revoking, suspending or otherwise disciplining Certified Public
5 Accountant Certificate No. 24770 issued to John Curtis Noyer;
6 2. Taking such other and further action as the Board deems proper.
7

8
9 DATED: November 12, 1997

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11 Carol B. Sigmann
12 Executive Officer
13 Board of Accountancy
14 Department of Consumer Affairs
15 State of California
16 Complainant
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BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation)	CITATION NO. CT-96-23
Against:)	
)	OAH No. N 9609009
JOHN CURTIS NOYER)	
P.O. Box 20868)	
Castro Valley, California 94546)	
)	
Certified Public Accountant)	
Certificate No. CPA 24770)	
)	
Respondent.)	
)	
)	

PROPOSED DECISION

This matter was heard before Perry O. Johnson, Administrative Law Judge, State of California, Office of Administrative Hearings on February 10, 1997, at Oakland, California.

The Board of Accountancy ("the Board") was represented by Jeanne C. Werner, Deputy Attorney General.

Respondent John Curtis Noyer ("Respondent") was present for part of the proceedings, and he represented himself. Respondent abruptly left the hearing following both his refusal to give evidence or to testify in his case-in-chief. He refused to comply with the call by the Board's counsel that he testify in the Board's rebuttal case as authorized under Government Code section 11513, subdivision (a).

FINDINGS OF FACT

I

On June 17, 1977, the Board issued Certificate number 24770 (Certified Public Accountant) to Respondent. The certificate is currently in force and effect. It will expire, subject to renewal, on August 1, 1997.

II

On May 10, 1979, the Board issued certificate number COR 1012 (Certified Public Accountant Corporation) to John Noyer Accountancy Corporation ("the Noyer Corporation"). For all relevant time, Respondent was the sole shareholder in the Noyer Corporation.

The certificate was subject to renewal every two years pursuant to Business and Professions Code section 5152. In the instance of the Noyer Corporation, the applicable renewal period of the certificate ran from June 1 through May 31 of even-numbered years.

From June 5, 1990, through May 27, 1994, Respondent biannually renewed the certificate for the Noyer Corporation.

III

On March 14, 1996, the Executive Officer for the Board ("the Executive Officer") issued Citation number CT-96-23 to Respondent. The citation alleged that Respondent had violated Business and Professions Code section 5156 [prohibition against unprofessional conduct by an accountancy corporation]. Respondent was ordered to return the corporation's wall certificate and to pay an administrative fine of five hundred (\$500) dollars.

The description of the violation was that although the Franchise Tax Board on June 3, 1991, suspended the Noyer Corporation from practice, nevertheless after notice of the suspension Respondent held out the Noyer Corporation as continuing to practice public accountancy.

IV

On April 12, 1996, Respondent filed an appeal contesting the Citation and requesting a hearing.¹

V

On June 3, 1991, pursuant to the provisions of the Bank and Corporation Tax law, and more particularly section 23302 of the Revenue and Taxation Code, the Franchise Tax Board

¹ Although Respondent indicated during the opening minutes of the hearing that he had not seen the citation until the morning of the hearing, the form that bears the signature of Respondent, dated April 12, 1996, as entitled "Request for Administrative Hearing," has opening sentences that read: "I hereby acknowledge receipt of the above identified citation.... I do hereby contest the citation.... My detailed response ... is included...."

transmitted to the Secretary of State a document that conveyed that the Noyer Corporation had its corporate powers, rights and privileges suspended.

Since the date of suspension, the Noyer Corporation has remained suspended as reinstatement never has been effected.

VI

Following the date of suspension, Respondent permitted the Noyer Corporation to be held out as a legally constituted going concern.

On or about April 21, 1992, Respondent signed a letter as addressed to the State Bar of California. The letter was written on stationery with the letterhead that appeared as "John Noyer Accountancy Corporation, 1208 Morgan Avenue, San Leandro, California." The single page stationery had printed at the bottom of the page: "Members: American Institute of Public Accountants (and) California Society of Certified Public Accountants."

On May 11, 1992, Respondent signed and submitted for filing a biennial renewal report for accountancy corporations. The renewal report included the name "John Noyer, An Accountancy Corporation." The report reflected the registration number "ac1012." The renewal report indicated "there have been no changes." The Board received the biennial renewal report on June 15 1992.

On April 15, 1994, Respondent signed and submitted for filing a biennial report for accountancy corporations. The renewal report included the name "John Noyer Accountancy Corporation." The report reflected the registration number "ac1012." The biennial report reflected Respondent's signature above the title: "President." The Board received the biennial renewal report on or about June 3, 1994.

VII

As late as June 30, 1994, although the Noyer Corporation was suspended and "without powers, rights or privileges to operate within California," Respondent continued to represent that the corporate entity was able to transact business. At that time Respondent's acts or omissions indicated that the Noyer Corporation operated from a principal address at 1208 Morgan Avenue, San Leandro, California.

VIII

Not until May 8, 1996, did Respondent cause to be delivered to the Board a written note that conveyed that the Noyer Corporation had been dissolved. However, Respondent's handwritten note relayed that the Noyer Corporation's certificate of licensure had been "torn into five pieces" and hence could not be returned to the Board.

IX

Respondent provided no evidence to refute the evidence presented by the Board.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code section 5156, by reason of the matters set out in Findings II, and V through VII, inclusive.

II

As Respondent has presented that the Noyer Corporation has been dissolved and that the former accountancy corporation's original (8 1/2 x 11") wall certificate was torn into pieces and destroyed, the Order of Correction in the citation has been satisfied.

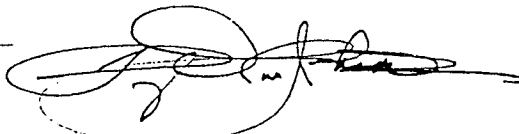
ORDER

Citation No. CT-96-23 as issued to Respondent John Curtis Noyer is sustained.

Respondent John Curtis Noyer is directed to effect payment of an administrative fine in the sum of five hundred (\$500) dollars within sixty (60) days of the effective date of this decision.

DATED: _____

March 10, 1997



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings



BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3862
(916) 263-3680



John C. Noyer
P.O. Box 20868
Castro Valley, CA 94546

Citation No. CT-96-23
License No. CPA 24770

An investigation has been conducted by the California Board of Accountancy. This citation is hereby issued to you pursuant to the Board of Accountancy's authority under Sections 125.9 and 5100 of the Business and Professions Code and Rule 95 - 95.6 of Title 16, Chapter 1 of the California Code of Regulations (hereinafter "Board Rules") for the violation(s) which were found during the investigation.

This citation details each violation charged and orders of correction where applicable. IT IS YOUR RESPONSIBILITY TO READ THE ENTIRE CITATION.

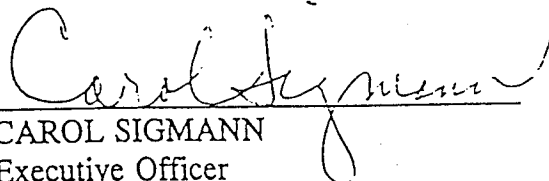
Unless contested, this citation shall become a final order of the Board on April 14, 1996; the Order of Correction is due on or before May 14, 1996, and the administrative fine totaling \$500.00 is due on or before May 14, 1996.

You are responsible for notifying the Board of Accountancy when correction is made. Proof of correction must be received at the above address no later than five (5) working days after the correction due date.

Payment of the administrative fine should be made payable to the State Board of Accountancy by cashier's check or money order. Please include the citation number on the payment and on all correspondence.

FAILURE TO RESPOND TO THIS CITATION WILL RESULT IN FURTHER DISCIPLINARY ACTION AGAINST YOUR LICENSE.

March 14, 1996
Date


CAROL SIGMANN
Executive Officer
STATE BOARD OF ACCOUNTANCY

CS:sns:ja

Item No. 1

Section(s)
Violated:

Business and Professions Code, Division 3, Chapter 1, Article 9,
SECTION 5156:

Section 5156 states in pertinent part, "An accountancy corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect"

Description
of Violation:

On June 3, 1991, the John Noyer Accountancy Corporation was suspended by the Franchise Tax Board. Despite this suspension the Accountancy Corporation of John Noyer, to include principal John Noyer, continued to practice public accountancy which violates Business and Professions Code Section 5156 for unprofessional conduct.

Order of
Abatement:

Pay the administrative fine set forth herein.

Order of
Correction:

Provide the Board of Accountancy a letter of good standing from the Franchise Tax Board for reinstatement of the Accountancy Corporation of John Noyer. In the alternative, if it is your intention to terminate the accountancy corporation, you must return the original (8 1/2 x 11") wall certificate. If you cannot return the certificate you must provide in writing an explanation as to why it cannot be returned.

Time to
Correct:

Sixty days

Administrative
Fine:

\$500.00